



2026:DHC:8794



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on : 25th September 2026*
Pronounced on : 06th October 2026
Uploaded on : 07th October 2026

CNR No. DLHC012561442014

+ MAC.APP. 13/2015 & CM APPL. 145/2015

RELIANCE GENERAL INSURANCE CO LTDAppellant

Through: Mr. Rajeev M. Roy, Advocate
(*through VC*)

versus

JYOTI DEVI & ORSRespondents

Through: Mr. Shrey Chathly, Adv. for
Respondent nos. 1 to 4

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL
JUDGMENT

ANISH DAYAL, J.

1. This appeal has been filed assailing the impugned award dated 12th September 2014 in MACT No. 788/2014 passed by Motor Accident Claims Tribunal (*'MACT/Tribunal'*), Tis Hazari Courts, whereby compensation of Rs. 63,10,000/- along with interest at 7.5% per annum was awarded.

2. The accident in question occurred on 16th March 2013 at about 05:30 a.m., when the deceased, *Dhyanendra Singh*, was going towards Rajghat from Sarai Kale Khan in a Tata 407 commercial vehicle. When he reached IP Flyover, Ring Road, in front of Vikash Vihar, ITO, the offending vehicle, a dumper bearing No. HR-69A-1911, was found parked in the middle of the



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road, allegedly without any branch of a tree or any dipper light, parking light or blinking headlight. As a result, the vehicle driven by the deceased rammed into the dumper, and the deceased suffered grievous injuries to which he later succumbed.

Submissions on behalf of Insurance Company

3. *Mr. Rajeev M. Roy*, counsel for the Insurance Company, challenged the award mainly on the following *two* aspects:

- i. Finding of negligence arrived at by the MACT in favour of the claimant and against the driver/owner.
- ii. Quantum of compensation.

4. On the aspect of negligence, *Mr. Roy* contends that the MACT did not give any proper reasoning and merely based on the principle of the preponderance of probabilities, decided that the negligence was indeed of driver/owner of offending vehicle.

5. He contended that, quite otherwise, offending vehicle was standing on the road and deceased was driving Tata 407 and ought to have seen the vehicle standing on the road.

6. As per FIR, dumper was standing in the first line at an approximate distance of 1 foot from the central verge. However, there was no reflector, branch of a tree or brick, etc. placed behind the vehicle to indicate that it was stationary to the vehicle approaching from behind.

7. *Mr. Roy* further stated that there was no eyewitness to the accident. Pursuant to the investigation, a statement was recorded of driver of offending vehicle, *Arjun Singh*, who disclosed that a defect had developed in his vehicle and that he was in search of a mechanic. He further stated that he did not arrange any reflector, tree branch or brick at the backside of the vehicle.



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8. Therefore, commission of offence under Section 304A of IPC and Sections 104 and 177 of Motor Vehicles Act was pressed.

9. As regards quantum of compensation, *Mr. Roy* contended that notional income of Rs. 25,000/- per month was wrongly assessed solely based on the testimony of Kotak Mahindra Bank official regarding the loan instalment of Rs. 15,344/- per month and that 50% future prospects were wrongly added.

10. He pointed out that in the loan statement provided by Kotak Mahindra Bank, a number of cheques had bounced and, therefore, merely on this basis it could not be concluded that deceased was earning Rs. 25,000/- per month, as has been assessed by MACT.

Submissions on behalf of Claimants

11. On the issue of negligence, *Mr. Shrey Chathly*, counsel for claimant, pointed out to the chargesheet wherein a statement was recorded of driver of offending vehicle, *Arjun Singh*, who disclosed that a defect had developed in his vehicle and that he was in search of a mechanic. He further stated that he did not arrange any reflector, tree branch or brick at the backside of the vehicle.

12. He further pointed out to the FIR, wherein it is noted that the blinkers of the offending vehicle were not on.

13. *On the issue of income*, he stated that the MACT has rightly assessed the notional income as the deceased was paying an EMI of Rs 15,344/- per month. Therefore, considering the same the MACT assessed that he would have spent some money on family as well and assessed the notional income at Rs. 25,000/-.

14. In support of his contention, he relied upon the judgment of Supreme Court in ***Gurpreet Kaur and Others v. United India Insurance Company***



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Ltd., decision dated 27th September 2022 of Supreme Court in Civil Appeal No. 6981-82/2022, where the Court was dealing with a case in which deceased in that case had purchased a tractor for which he had taken a loan of Rs. 3,90,533/- from Kotak Mahindra Bank and was paying a monthly instalment of Rs. 11,550/- and on this basis assessed the notional income of deceased at Rs. 25,000/- per month.

15. He further relied upon the judgment of this Court in *National Insurance Company v. Parvesh & Ors.*, 2023:DHC:6578, wherein this Court dealt with the question of the loan amount for which deceased was paying monthly instalments. The Court noted that his income certainly had been more than what he would have spent on himself.

Analysis

16. The MACT has relied upon the testimony of **PW1**, wife of deceased, although she was not an eyewitness, particularly on the manner in which the accident occurred. Moreover, Detailed Accident Report (*'DAR'*) was filed pertaining to FIR bearing No. 55/2013, PS IP Estate, including the charge sheet.

17. On the basis of the criminal record, the MACT proceeded on the basis that these documents were sufficient proof to reach the conclusion that driver was negligent.

18. It is noted that there was no eyewitness to the accident and pursuant to the investigations, a statement was recorded of the driver of the offending vehicle, *Arjun Singh*, who disclosed that a defect developed in his vehicle and he was in search of a mechanic, and he did not arrange any reflector, tree, branch or brick at the backside of the vehicle.

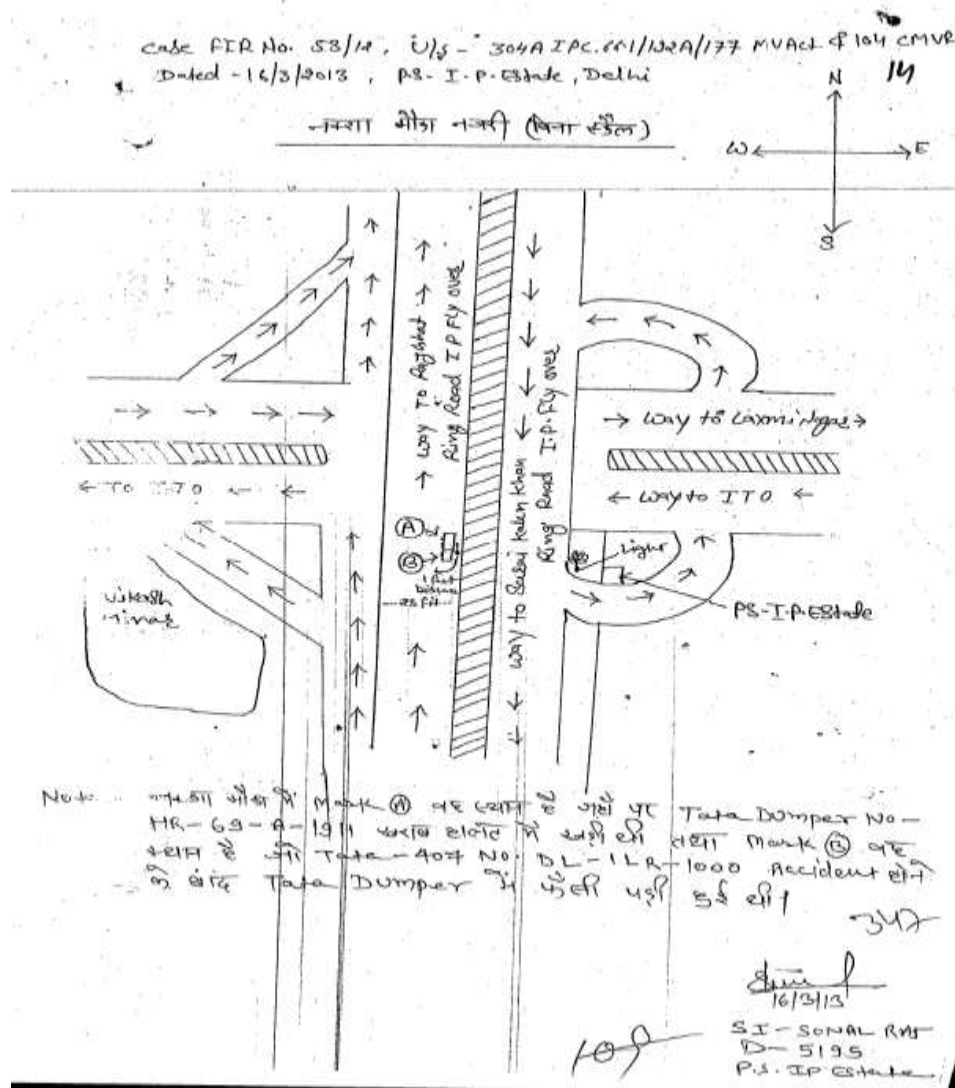


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19. Therefore, the commission of offence under Section 304A of IPC and under Sections 104/177 of the Motor Vehicles Act was pressed.

20. As per the site plan, the dumper was on the right side of the road going towards Rajghat with only 1 foot distance from the central verge. Site plan is extracted as under, for ease of reference:



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21. At 05:30 a.m., if there were no blinkers or any other indication that dumper had stopped due to any defect in the vehicle, it would have been difficult for any driver approaching on the right side of the road to have noticed the stationary vehicle in time to avoid the accident.

22. In this respect, reliance can be placed on the view taken by this Court in *United India Insurance Company v Lakshmi Kumari and others* 2026:DHC:1946, wherein, after discussing the principle of last opportunity and assessing the issue of contributory negligence, the court has noted that the application of the principle of *last opportunity* having been discontinued both in common law and by statutory reform, acceptable rule is that of *apportionment of damages* for contributory negligence. The Courts have to account for causation and the relevant blame-worthiness of the parties.

23. For ready reference, the following paragraphs from the decision are extracted as under:

*“34...It is apposite to first consider the historical underpinnings of contributory negligence, in order to appreciate the relevance and purpose of principle of last opportunity. A common law principle, contributory negligence was a defence used by defendants in cases where plaintiff was responsible for the harm caused to them, by not exercising ordinary care even though, the defendant was the tortfeasor. If proved, plaintiff's claim was wholly rejected and nothing could be recovered by way of damages. One of the earliest decisions illustrating this was **Butterfield v. Forrester** (1809) 11 East 60, where Lord Ellenborough, C.J. observed, “one person being at fault does not dispense with another's using ordinary care of himself.”*

*35...Principle of last opportunity is known to originate from the English case of **Davies v. Mann** (1842) 10 M & W 546 which, in brief, was a case of a donkey left by the plaintiff on a public highway and the defendant who was*



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driving at an improper pace collided with the donkey resulting in injuries to the donkey. Instead of applying contributory negligence and holding the plaintiff entirely liable, as per the tort law principles prevalent at that time, an exception was carved out stating that, if the accident could have been avoided by the exercise of ordinary care by the defendant, plaintiff shall not be held liable for contributory negligence. Therefore, to encapsulate, the person who had the last opportunity to avoid an accident, notwithstanding negligence of the other person, shall be held liable for it.

36...The underlying premise of this principle then relates to proximity of plaintiff's act of negligence as a resultant cause of the accident. Additionally, knowledge on the part of defendant played a key role in determination of liability, if the peril could have been prevented had the defendant known or by adopting sufficient precaution.

*41...Rule of last opportunity was mentioned in passing by Supreme Court in **Sushma** (supra) in the context of the circumstances in which the accident took place. Supreme Court observed that, if the accident took place during the day or when the place was well illuminated, perhaps, the car driver would have been equally responsible by applying rule of last opportunity. However, on the facts of the case, all circumstances pointed to the negligence of the truck driver who abandoned his truck in the middle of the road. Supreme Court does not deliberate any further on the rule of last opportunity.*

42....The application of the rule of last opportunity having been discontinued both in common law and by statutory reform, the acceptable rule is of apportionment of damages for contributory negligence. For this purpose, the Courts must account for causation and the relative blame-worthiness of the parties.

(emphasis added)

24. There is no evidence on record, though in the written statement the driver/owner denied that the dumper was standing without any dipper light,

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parking light or any other indication. Driver/owner did not testify in that regard before the MACT.

25. Besides, as noted above, in the statement as recorded, the driver had stated that he did not arrange any reflector, tree branch or brick etc. at the backside of the vehicle. There is no doubt that the truck was certainly parked on the wrong side of the road. At best, there can be a dispute whether parking lights or any other indication were used or not. The driver states in his written statement that they were used. However, he gave a statement to the police that they were not. There is no evidence or deposition by the driver before the MACT in order to substantiate his assertion. Therefore, looking at the overall circumstances of the matter, the MACT was right in not awarding any contributory negligence to reduce the compensation.

26. Therefore, applying the principle of preponderance of probabilities, it would be apparent that the vehicle was left unattended and abandoned on the fast lane of a major thoroughfare in early morning. The Tata 407 having crashed into it, cannot be a case of contributory negligence.

27. As regards the issue of quantum of compensation, finding of MACT is required to be examined with respect to assessment of notional income. It is noted that deceased was 23 years of age on the date of accident. He was a professional driver and a graduate by qualification.

28. **PW2**, Law Officer from Kotak Mahindra Bank, specifically stated that deceased had taken a loan for a sum of Rs. 5,04,000/- in 2011, which he had to repay in 45 instalments. The EMI per month was Rs. 15,344/-, and the last instalment was paid for the month of March 2013.

29. *Mr. Roy* pointed out from the loan statement that a number of cheques had been dishonoured and, therefore, assessment made by MACT, on the



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basis that deceased was capable of earning an income in that range, was not correct.

30. However, loan statement provided by *Kotak Mahindra Bank* does show that EMI of Rs. 15,344/- was regularly debited every month, though there were instances of dishonour of cheques; however, it is noted that the instalments were received shortly thereafter, on average within 15 to 20 days. Overall, the statement shows that deceased was largely meeting his loan repayment obligations, though there were occasions when payment was not made on time and was subsequently paid.

31. Moreover, **PW1**, wife of the deceased, she had stated in her testimony that the deceased was earning Rs. 32,000 – Rs. 35,000/- per month as the driver-cum-owner of Tata 407 and in the cross-examination also she gave the copies of the educational certificate, the Driving Licence of the deceased and the PAN Card. She further stated that she had not filed any ITR or any income proof.

32. It appears that, after purchasing the commercial vehicle, deceased was plying it and earning through assignment jobs. His income, therefore, could have been scattered as opposed to having a consistent amount coming in. However, the fact that deceased was able to pay EMI of Rs. 15,344/- per month is relevant while computing the notional income of the deceased. Therefore, in the opinion of this Court, assessment made by the MACT by taking benchmark income at Rs. 25,000/- per month, allowing approximately Rs. 10,000/- per month towards his personal expenses, is appropriate and acceptable.

33. Reliance placed by counsel for claimant, *Mr. Shrey Chathly*, on **Gurpreet Kaur** (*supra*), is also instructive. In that case, deceased had purchased a tractor for which he had taken a loan of Rs. 3,90,533/- from



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Kotak Mahindra Bank and was paying a monthly instalment of Rs. 11,550/-

34. The Tribunal took into account the EMI being paid and assessed the deceased's income at Rs. 25,000/- per month.

35. The Supreme Court considered the challenge to the same and held that the deceased was regularly making payment of Rs. 11,550/- as an instalment to discharge his loan liability towards the tractor, and the entire loan was paid back within a year or so, which establishes the earning capacity of the deceased.

36. The approach adopted by the Tribunal was considered as balanced and the assessment of the income at Rs. 25,000/- per month was appropriate and justified. Notably, the Supreme Court stated as under:

“In the summary proceedings where the approach of the Tribunal's determination must be in conformity with the object of the welfare legislation, it was rightly held that the monthly income of the deceased could not be less than Rs. 25,000/-. The reason assigned by the High Court to reduce the monthly income of the deceased is totally cryptic and has no rationale. The Notification of Minimum Wages Act can be a guiding factor only in a case where there is no clue available to evaluate monthly income of the deceased. Where positive evidence has been led, no reliance on the Notification could be placed, particularly when it was nobody's case that the deceased was a labourer as presumed by the High Court”

(emphasis added)

37. The Court also resonates with the view taken earlier by this Court in ***Savita & Ors. v. National Insurance Company Ltd.*** 2026:DHC:3626, where if no documentary evidence is available, some amount of guesswork is necessary. This guesswork can be based on certain surrounding circumstances. The relevant passages from ***Savita*** (*supra*) are as under:



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“30. Principles which may be culled out from these cases cited above, and be used as guidepost for assessment of benchmark income, can be summarised as under:

A. Lack of documentary proof

- i. In the informal sector, it may not always be possible to produce documentary proof of employment and payment of wages, which are usually paid in cash.*
- ii. Where there is lack of documentary proof to support that the victim was working in Delhi, reliance may be placed on facts and circumstances of the case to determine whether, the victim was residing in Delhi on the date of accident, in conjunction with documents such as driver's license, voter ID card, etc. Minimum wages of place of work will be then considered.*
- iii. If documentary proof has not been filed, the Court can use the minimum wage benchmark of an appropriate category i.e., unskilled, skilled, matriculate, etc., as a benchmark for assessment, but not be constrained to grant the lowest tier.*

B. Oral testimony of family members, employers

- i. Assessment of income can also be done on the statement of the immediate legal heir of deceased, i.e., wife, father, or immediate family member, along with a statement of the employer, if any. Testimonies of the above-mentioned persons should be consistent and there should be an unsuccessful rebuttal by the Insurance Company or the contesting party.*
- ii. If the testimonies are not reliable, the Court can use the minimum wage benchmark of an appropriate category i.e., unskilled, skilled, matriculate, etc., as a benchmark for assessment, but not be constrained to grant the lowest tier.*

C. Proof of employment

- i. If documents in support of employment inter alia, Salary/Wage Certificate, Income Tax Returns ('ITRs') have been filed, same shall be considered.*
- ii. In the absence of such proof, assessment done by the Court has to be based on some intelligent guesswork and may not be restricted to the minimum wage parameter*



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after taking into account a holistic analysis of the evidence on record. For example, place of employment, testimony of co-workers, or any other person who testifies in favour of the injured/deceased employee.

iii. The entire assessment is ultimately imbued with an element of approximation and guesswork, as part of the inquiry proceedings and not on exactitude.

iv. Reliance may be placed on State specific legislations, as well as Minimum Wage Notifications to lean on for support, in order to determine what qualifies as a skilled worker and an unskilled worker, with respect to the vocation of the victim.

D. Age, occupation and educational background of the victim

i. In cases where the victim was a student and the evidence on record suggests that the victim would have engaged in employment after completing education, had the accident not taken place; the Courts must consider the educational background keeping in view the missed future opportunities.

ii. Reliance to be placed on documents and testimonies indicating the prior educational background of the victim, if no proof has been placed with regards to the employment details.

E. Standard of living of deceased persons

i. When a claim petition has been filed by the surviving dependents of a deceased, where the deceased was the breadwinner of the family, Courts must attempt to ascertain the benchmark income keeping in view the void left by the breadwinner's death and income must be determined keeping in view the standard of living enjoyed by the family before the accident took place. While monetary compensation is a means to filling the financial hole left by the deceased, an estimate may be required to be done in order to support the remaining family members."

(emphasis added)



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38. A Coordinate Bench of this Court in *National Insurance Company v Parvesh & Ors*, 2023:DHC:6578 also dealt with a case where deceased was paying monthly instalments towards a loan. Court noted that his income was certainly higher than what he would have spent on himself. Court observed as under:

“8. ...Merely because the claimants were unable to produce the income tax records or other cogent material in support of their assertion of the income of the deceased, their claim should not have been reduced on this account....”

(emphasis added)

39. In *Chandra alias Chanda alias Chandraram & Anr. v Mukesh Kumar Yadav & Ors.*, (2022) 1 SCC 198, the Supreme Court has held that in absence of documentary evidence on record for the income of the deceased, some amount of guesswork is required to be done. Though the minimum wages notification can be a yardstick but, at the same time, it cannot be an absolute one to fix the income of the deceased.

40. Therefore, where there is no documentary indication of earning capacity, but there is sufficient evidence of consistent payment towards a substantial loan, such circumstance can constitute evidence of deceased having sufficient earning capacity. In such circumstances, minimum wage notifications would not necessarily be brought into play, particularly when there is no evidence that deceased was simply working as a labourer or in any unskilled job.

41. In present case, ownership of vehicle under hypothecation is not disputed by Kotak Mahindra Bank. Therefore, in view of circumstances discussed above, adoption of minimum wages would not be warranted.



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42. Since entire family, including parents of deceased, was financially dependent upon the deceased and there was no cross-examination by driver/owner or Insurance Company on this aspect, deduction of 1/4th towards personal and living expenses is acceptable. Application of multiplier of '18' is also appropriate.

43. As regards the other components of compensation, the same are liable to be realigned in view of the principles laid down in ***National Insurance Co. Ltd. v. Pranay Sethi and Ors.*** (2017) 16 SCC 680 as under:

- a. Compensation towards *loss of love and affection* shall not be awarded in view of the decision in ***United India Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur and Ors.*** (2021) 11 SCC 780;
- b. Funeral expenses shall be reduced to Rs.15,000/-, instead of Rs.25,000/-;
- c. Compensation towards *loss of estate* shall be enhanced to Rs.15,000/-, instead of Rs.10,000/-; and
- d. *Loss of consortium* shall be awarded at Rs. 1,60,000/-, i.e. Rs. 40,000/- each to the four claimants, namely, parents of the deceased, spouse and minor daughter.
- e. *Future prospects*, which were awarded at 50%, ought to be at 40% in view of the standardised principles.

44. Accordingly, the revised compensation will be as under:

Sr. No.	Heads	Awarded by the Tribunal	Awarded by the Court
1.	Monthly income of the deceased (A)	Rs. 25,000/-	Rs. 25,000/-
2.	Add-Future Prospects (B)	50%	40% of Rs. 25,000/- = Rs.

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			10,000/-
3.	Less-personal expenses of the deceased (C)	1/4 th	1/4 th of Rs. 35,000/- = Rs. 8,750/-
4.	Annual loss of dependency [(A+B) - C] x 12= D]	Rs. 3,37,500/-	Rs. 3,15,000/-
5.	Multiplier (E)	18	18
6.	Total loss of dependency (D x E) = (F)	Rs. 60,75,000/-	Rs. 56,70,000/-
7.	Compensation for loss of love and affection (G)	Rs. 1,00,000/-	NIL
8.	Compensation for loss of consortium (H)	Rs. 1,00,000/-	Rs. 1,60,000/-
9.	Compensation for loss of estate (I)	Rs. 10,000/-	Rs. 15,000/-
10.	Compensation towards funeral expenses (J)	Rs. 25,000/-	Rs. 15,000/-
11.	Total Compensation (F+G+H+I+J = K)	Rs. 63,10,000/-	Rs. 58,60,000/-
12.	Interest Awarded	7.5%	7.5%
13.	Reduced Compensation	Rs. 4,50,000/-	

45. Accordingly, the compensation is reduced by Rs. 4,50,000/-.

46. *Vide* order dated 7th January 2015, this Court directed the Insurance Company to deposit 40% of the award amount along with accrued interest with the Tribunal and further directed release of monthly interest accrued on the fixed deposit to respondents no. 1 and 3 in the ratio of 70% and 30%, respectively.

47. Accordingly, the balance compensation, i.e. the revised compensation minus the amount already deposited, along with accrued interest thereon, shall be deposited within a period of four weeks. Upon such deposit, the said amount shall be released in terms of the directions contained in the impugned award.

48. Accordingly, the appeal stands disposed of with above directions.

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49. Pending applications, if any, are rendered infructuous.
50. Copy of this judgement be sent to concerned MACT.
51. Copy of this judgement shall also be sent to concerned bank.
52. Statutory deposit, if any, shall be refunded to Insurance Company, only if the order of deposit has been complied with.
53. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

OCTOBER 06, 2026/rk/bp

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